

David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St.
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 17.1(f)(1))	No. R-20-0005
AND RULE 41, FORM 28, ARIZONA)	
RULES OF CRIMINAL PROCEDURE)	SUPPLEMENT TO
)	PETITIONER'S REPLY
_____)	

Petitioner submits the attached Supplemental Appendix, which contains new additions to the text of Rule 17.1(f)(1) that further clarify the meaning and application of the proposed rule. Petitioner requests the Court to consider these additions as if they were included in the version of Rule 17.1(f)(1) appended to the Reply.

RESPECTFULLY SUBMITTED this 29th day of May 2020.

David K. Byers, Administrative Director
Administrative Office of the Courts

SUPPLEMENTAL APPENDIX TO THE REPLY

This Supplemental Appendix shows the proposed rule with new additions that are shown by underline and **yellow highlight.**

Rule 17.1. The Defendant's Plea.

- (a) Jurisdiction; Personal Appearance.** [no change]
- (b) Voluntary and Intelligent Plea.** [no change]
- (c) No Contest Plea.** [no change]
- (d) Record of a Plea.** [no change]
- (e) Waiver of Appeal.** [no change]
- (f) Limited Jurisdiction Court Alternatives for Entering a Plea **and Sentencing**.** The provisions of **Rule 17 and the provisions of** Rule 26.9 that require a defendant to be present at the time of sentencing are met by the requirements of this section.
 - (1) Telephonic Pleas.** “Telephonic” includes voice only communications between the court and the parties, and an application that permits video in addition to voice communications. The provisions in this subpart concerning telephonic pleas also apply to pleas submitted through an online dispute resolution (“ODR”) system **approved by the Administrative Office of the Courts**.
 - (A) Discretionary.** A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to any misdemeanor offense.
 - (B) Procedure.** The defendant must submit the plea in writing to the court, and the writing must be substantially in the form set forth in Rule 41, Form 28. If authorized by the court, the defendant may submit plea documents through an online dispute resolution system, and Form 28 may be used for that process. The documents the defendant submits for a telephonic plea must include:
 - (i)** a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint or to the offense or offenses described in a written plea agreement;
 - (ii)** a legible photocopy of the defendant’s driver’s license or other government-issued photo identification that contains the defendant’s name and birth date; and
 - (iii)** any other forms the court or the parties deem necessary for completing a plea under the circumstances of the case.

(C) *Fingerprint.*

- (i)** If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A), Form 28 must also contain a signed certification from a law enforcement officer in the state in which the defendant resides that the defendant personally appeared before the officer and signed Form 28, and that the officer affixed the defendant's fingerprint to the form.
- (ii)** If the defendant is entering a plea to an offense described in A.R.S. § 13-607(A) and the defendant's plea form does not include the defendant's fingerprint and the certification of a law enforcement officer, as required by this subpart, the court may defer acceptance of the plea until the defendant has submitted the required fingerprint and certification, or until the defendant appears in open court for sentencing and provides a fingerprint at that time.
- (iii)** **In extraordinary circumstances,** instead of requiring a certification and fingerprint, the court may permit another method of proving the defendant's identification on Form 28, including but not limited to allowing the defendant to use a notary public to witness the defendant's signature on the form.

(D) *Judicial Findings.* Before accepting a plea, the court must hold an in-person or telephonic hearing with the parties, inform the defendant that the offense may be used as a prior conviction, and find:

- (i)** it has personally advised the defendant of the items set forth in Form 28;
- (ii)** a factual basis exists for believing the defendant is guilty of the offenses to which the defendant pleads; and
- (iii)** the defendant's plea is knowingly, voluntarily, and intelligently entered.

(E) *Sentencing.* After entry and acceptance of the plea, the court may proceed to sentence the defendant, either on the same day or subsequently, in-person or telephonically.

(F) *Victim's Rights.* In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom.

(2) *Plea by Mail.* [no change]